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**THE UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA - SOUTHERN DIVISION**

TRENTON SMITH, individually	) <u>Case No. 8:25-cv-161-FWS-DFM</u>
and on behalf of all others similarly	)
situated,	)
	) <u><b>CLASS ACTION</b></u>
Plaintiff,	)
	)
vs.	)
	) <u><b>PLAINTIFF'S MOTION FOR</b></u>
JOHN SHAHIDI, an individual;	) <u><b>CLASS CERTIFICATION, OR IN</b></u>
NELK, INC. dba NELK, FULL	) <u><b>THE ALTERNATIVE, MOTION</b></u>
SEND, a Canadian Company,	) <u><b>FOR CONTINUANCE PENDING</b></u>
METACARD, LLC, a Delaware	) <u><b>COMPLETION OF CLASS</b></u>
Limited Liability Company; NELK	) <u><b>DISCOVERY</b></u>
USA, INC., a Delaware Corporation;	)
KYLE FORGEARD, an individual,	) Courtroom: 10D
	) Judge: Hon. Fred W. Slaughter
Defendants.	) Hearing Date: January 8, 2026
	) Time: 10:00 a.m. PST

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1 **I. INTRODUCTION**

2 Plaintiff brought this lawsuit to address Defendants’ role in a calculated scheme  
3 to sell the illusion of investment in a certain non-fungible tokens (“NFT”) known as  
4 the “Full Send Metacard” (“Metacard”). Plaintiff and thousands of others (the “Class  
5 Members”) were lured into purchasing the Metacard based on Defendants’ unequivocal  
6 promises: that cardholders would receive exclusive access to lucrative business  
7 ventures, investment opportunities, and meaningful perks. Defendants never intended  
8 to comply with those promises. Instead, Defendants fleeced Plaintiff and the Class  
9 Members of over \$23 million. Rather than delivering on the promises made to  
10 purchasers, Defendants flagrantly used the funds raised by the Metacard sale for their  
11 own personal benefit. Such acts of flagrant misuse included the transfer of revenues  
12 from consumers to online casino platforms soon after Defendants received the funds.

13 The experiences of Plaintiff and the Class Members are uniform, and all subject  
14 to the exact same words and actions of Defendants. Consequently, the harm to Plaintiff  
15 and the Class Members is likewise uniform. As set forth herein, this case is ideally  
16 suited to a class action, and Plaintiff respectfully requests that this Court grant class  
17 certification pursuant to Fed. R. Civ. P. 23.

18 Alternatively, Plaintiff requests this Court stay the current deadline of November  
19 13, 2025, for filing a class certification motion until after the January 13, 2026 deadline  
20 for Defendants to produce additional documents per Magistrate Judge Douglas  
21 McCormick’s order on Plaintiff’s Motion to Compel. Defendants in this case  
22 obfuscated discovery efforts by refusing to fully respond to discovery requests, causing  
23 Plaintiff to seek relief from the court and resulting in difficulties for Plaintiff in  
24 preparing the current Motion.

25 Providing Plaintiff with adequate time to conduct relevant class discovery will  
26 allow the Court to fully undertake the necessary “rigorous analysis” for certification  
27 purposes. Denial of class discovery may be an abuse of discretion when the propriety  
28 of a class action cannot be determined without discovery. *See ABS Entm’t, Inc. v. CBS*

1 *Corp.*, 908 F.3d 405, 427 (9th Cir. 2018). Accordingly, if this Court has any  
2 reservations about class certification, then Plaintiff requests a meaningful opportunity  
3 to conduct class discovery and file an amended motion for class certification by March  
4 1, 2025.

## 5 **II. FACTUAL BACKGROUND**

6 As the Court is aware from previous briefing, including Defendants’ Motion to  
7 Dismiss FAC (ECF No. 68) and Plaintiff’s Response thereto (ECF No. 69), this case  
8 involves allegations by Plaintiff that Defendants sold digital assets that did not have  
9 the characteristics, uses, or benefits Defendants advertised and promoted.

### 10 **A. *The Metacard***

11 Specifically, Defendants Kyle Forgeard and John Shahidi (collectively  
12 “Founder Defendants”) are YouTube personalities known for their YouTube Channel  
13 “Nelk Boys,” which currently has a following of 8.22 million subscribers. *See*  
14 <https://www.youtube.com/channel/UCkhxWF5CTMUgxneqAFP96LQ> (last viewed  
15 November 12, 2025). Defendant Nelk USA, Inc. (“Nelk USA”), is a wholly owned  
16 subsidiary of Defendant Nelk, Inc., and Defendant Metacard, LLC, is a wholly owned  
17 subsidiary of Nelk USA. *See* Exhibit (“Ex.”) 1, Deposition of Drew Hill (“Depo.  
18 Hill”), November 7, 2025, 30:15–31:25. Metacard, LLC, launched the Full Send  
19 Metacard (“Metacard”) at issue in this case. The Metacard is a Non-Fungible Token  
20 (“NFT”)—a type of digital asset that can be purchased, sold, and transferred on other  
21 cryptocurrencies. Ex. 2, Declaration of Jeremy Clark (“Decl. Clark”), § 2.2. The  
22 Metacard was released for public sale on January 19, 2022. *Id.* § 3.1. The key decision  
23 makers for the Metacard project were Founder Defendants and Sam Shahidi. Ex. 1,  
24 Depo. Hill 32:22–25.

### 25 **B. *Metacard Pre-Sale***

26 Defendants hyped the sale of Metacard on a variety of virtual platforms. For  
27 example, on January 18, 2022, the day before the release of Metacards, Founder  
28 Defendants used their podcast, Full Send Podcast, to promote the sale of Metacards.

1 Specifically, the podcast episode number 25 (“the podcast episode”) was entitled  
2 “How the Full Send NFT Will Help Us Build an Empire,” and included Defendant  
3 John Shahidi and Sam Shahidi and several other individuals who discussed the  
4 upcoming Metacard project and sale. Ex. 3, Declaration of Tom Kherkher (“Decl.  
5 Kherkher”), Ex. A. Finally, on January 18, 2022, the Defendants held a livestream  
6 (“the livestream”) attended by more than 240,000 individuals to promote the sale of  
7 Metacards. Ex. 3, Decl. Kherkher, Ex. B, Livestream Transcript. Founder Defendants  
8 spoke at the livestream about the Metacard NFT project and sale and directed attendees  
9 to the podcast episode for more information. *Id.*

10 Particularly during the livestream, Defendants made numerous representations  
11 regarding the features of the Metacard geared toward inducing listeners to purchase  
12 the Metacard. For example, during the livestream, Defendant Forgeard stated “we’re  
13 going to be doing a ton of projects. In all those projects the only first access goes to  
14 Metacard holders.” Ex. 3, Decl. Kherkher, Ex. B, Livestream Transcript. Defendant  
15 Forgeard also stated the Metacard project allowed Defendants to bypass going to  
16 dinner with investors to pitch ideas and instead allowed purchasers to “join this  
17 community” to “help[] build something” and at the same time receive a valuable token.  
18 *Id.* Similarly, during the podcast episode, Defendants stated, “this project allows us to  
19 speed up some of the . . . to start, to start it to financing, right? Because we’re always  
20 like, oh we’re going to budget this, where are we going to get that? And now we have  
21 partners, right? People are going to be bought into it, right? And we’re going to  
22 produce or perform.” Ex. 3, Decl. Kherkher, Ex. A, Podcast Transcript.

23 Defendants went on to claim, “we have a team, we have a budget, we have a  
24 play, and we’ll go way deeper into this to make sure that this is something that is  
25 supported through all the ups and downs that happen in the FTE world and the  
26 metaverse world.” *Id.* Defendants promised they were “getting to work right away” on  
27 future projects, including developing “lounges” and other physical locations for  
28 Metacard holders. Ex. 2, Decl. Kherkher, Ex. B, Livestream Transcript. Defendant



1 Shahidi assured Plaintiff that Defendants would be treating the Metacard venture “as  
2 a real business,” like an initial public offering that “go[es] public” and “takes . . .  
3 money to build the business and grow the business.” *Id.* Defendants compared the  
4 Metacard to a “stock” or “decentralized stock.” *Id.*; Ex. 3, Decl. Kherkher, Ex. A,  
5 Podcast Transcript. All these statements were made the day before the Metacard went  
6 on sale and were designed to encourage sales.

7 Also on the livestream, Defendants announced that there would be a “whitelist”  
8 pre-sale of the Metacard at 9:30 am, which would be limited to individuals who were  
9 selected to join and completed the form to be on the whitelist. *Id.* Then a public sale  
10 of the Metacard would begin as 12:30 p.m.

11 **C. Metacard Sale**

12 Sales of the Metacard began on January 19, 2022, using Ethereum’s blockchain  
13 technology. Ex. 2, Decl. Clark §§ 2.1, 3.1. Ethereum is a type of cryptocurrency. *Id.* §  
14 2.1. To purchase Metacard, purchasers create a digital address linked to a digital wallet  
15 where Ethereum’s currency, ETH, can be sent and received in a digital transaction. *Id.*  
16 The Metacard has an associated “smart contract,” which is a custom software  
17 application that governs the transaction. *Id.* § 2.1, 3.5. During the initial mints (*i.e.*, the  
18 initial sales), the price of the Metacard was .75 ETH. *Id.* § 3.1. Purchasers initiate the  
19 minting process by interacting with the contract on the Ethereum platform. *Id.* To  
20 purchase the Metacard, the purchaser had to visit the website,  
21 <https://fullsend.metacard.io>, connect his or her wallet, and follow the prompts to mint  
22 the Metacard. *Id.*

23 Over the course of four different sale periods on January 19, 2022, a total of  
24 10,000 Metacards were minted and transferred to purchasers. *Id.* Each Ethereum  
25 address could purchase between one and ten Metacards, and the 10,000 Metacards  
26 were purchased by 5,226 unique addresses, most of which (3,404) purchased only a  
27 single Metacard. *Id.*

1           **D.     Metacard Sale Proceeds**

2           The initial Metacard sale earned 7424.25 ETH, valued at around \$23 million,  
3 making the average cost of each Metacard \$2,300. *See Id.* § 3.3. Before the sales of  
4 the Metacard were final, 2,549.25 ETH was withdrawn and transferred to a single  
5 address (the “Metacard treasury”). *Id.* Approximately forty minutes after the final  
6 Metacard sale, the remaining 4,875 ETH was transferred to the Metacard treasury. *Id.*  
7 The Metacard treasury began transferring funds to a variety of addresses over the next  
8 several months, and by April of 2022, the running balance of the account had been  
9 mostly depleted. *Id.* § 3.3, Fig. 4 and 5.

10          One of the recipients of the Metacard proceeds from the Metacard treasury is  
11 the website Stake.com, which is an online casino and sportsbook that allows gambling  
12 with cryptocurrencies including ETH. *Id.* § 3.3, Table 2. The Metacard treasury  
13 transferred 201 ETH to Stake.com addresses. *Id.* Another recipient of transfers from  
14 the Metacard treasury was boredjerky @ OpenSea, which received approximately  
15 70.79 ETH, just over one-third of the amount transferred to Stake.com. *Id.* The details  
16 of these transfers are being sought by Plaintiff in discovery, which has not been  
17 completed in this case.

18           **E.     Metacard Sale Fallout**

19          After the initial sale, Metacards continued trading on the secondary market. *Id.*  
20 § 3.4. As noted above, the initial minting price of the Metacard was .75 ETH. During  
21 January following the initial sale, the value of the Metacard rose to an average of 1.08  
22 ETH, measured by the secondary sales market. *Id.* § 3.4. In February of 2022, the  
23 average value rose to 1.47 ETH. *Id.* By May of 2022, the value fell back to .74 ETH.  
24 *Id.* The price and sales volume have continued to decrease over time. *Id.* § 3.4, Fig. 6.  
25 According to the terms of the applicable smart contract, each secondary market  
26 transfer earned royalties for Defendants. *Id.* § 3.5. Defendants collected an additional  
27 1,500 ETH (worth approximately \$4.3 million dollars) from royalties on the secondary  
28 market.

1 Time passed and Defendants failed to deliver on the promises they had made  
2 regarding the Metacard, and Metacard holders began expressing frustration in the Full  
3 Send discord channel. *See e.g.*, Second Amended Complaint (“SAC”) ¶ 67 (comments  
4 including “Really lol,” “The one scamming,” and “you sure that’s the tea and not the  
5 bag”).<sup>1</sup> Despite the discontent, Defendants continued to reassure purchasers of the  
6 value of the Metacard, all the while earning the royalties from secondary market  
7 transfers. *Id.* ¶¶ 67, 70, 72, 76–78, 106.

8 In April of 2024—more than two years after the initial Metacard sale—  
9 Defendants announced their “Bored Jerky Program” to Metacard holders, which  
10 Defendants touted as a “landmark initiative.” *Id.* ¶¶ 110–12. The “landmark initiative”  
11 set aside a forty percent share of Bored Jerky for Metacard holders to be held as  
12 “Phantom Stock Plan” that would expire in ten years with a possibility of extension if  
13 an exit had not yet occurred. *Id.* ¶ 112. In order to participate in the Program, Metacard  
14 holders were required to refer three new customers to the Bored Jerky website,  
15 boredjerky.com, using a unique referral code, with a “new customer” being defined by  
16 having a unique email address at checkout. *Id.*

17 For those who did not want to participate in the Bored Jerky Program,  
18 Defendants represented they would refund the Metacard purchase price, not to exceed  
19 \$2,300.00, with interest. *Id.* To participate in the refund, a Metacard holder was  
20 required to sign a “Token Rescission Agreement” with Defendant Metacard LLC,  
21 which Defendants represented would require the Metacard holder to return all “Full-  
22 Send Metacard” blockchain-based tokens. Regardless of which option the Metacard  
23 holder selected, the offer was only available for thirty days—from May 20, 2024, until  
24 June 20, 2024. SAC ¶ 112.

25 Ultimately, the Bored Jerky Program appeared to be another empty promise  
26 intended to retain as much benefit from the Metacard sales as possible. As noted above,  
27 \_\_\_\_\_

28 <sup>1</sup> The screen shots are from Defendants’ discord channel, in which Defendant Shahidi was continually involved. *See* Depo. Hill 111:12–112:1.

1 the boredjerky @ OpenSea, received only 70.79 ETH from the Metacard treasure,  
2 which amounts to just over one-third of the amount transferred to the online casino  
3 and sportsbook Stake.com. Further, as of the drafting of the current Motion, the Bored  
4 Jerky website, boredjerky.com, redirects to a different website, rangercut.com, which  
5 appears to have no functionality. <https://boredjerky.com> (last viewed November 12,  
6 2025).

7 Based on an analysis of Metacard transfers following Defendants' choice of the  
8 Bored Jerky or refund routes, it appears that Defendants established two addresses for  
9 transferring Metacard, one for the Bored Jerky program and one for refunds. Decl.  
10 Clark § 3.6. It is not readily apparent which is which, but these two addresses hold  
11 2,594 (~26%) and 1,287 (~13%) of Metacard NFTs respectively, suggesting that 6,119  
12 of the 10,000 (~61%) Metacards remain in the hands of purchasers. *Id.*

### 13 ***F. The Current Lawsuit***

14 In bringing this lawsuit, Plaintiff seeks to represent himself and all others  
15 similarly situated. Plaintiff has asserted claims against Defendants for fraud (SAC  
16 ¶¶ 156–71), violation of the California Legal Remedies Act (CLRA) (SAC ¶¶ 172–  
17 86), and civil conspiracy (SAC ¶¶ 187–91) based on Defendants' false representations  
18 regarding the Metacard Program.

### 19 **III. LEGAL STANDARD: CLASS CERTIFICATION**

20 Plaintiff's request for class certification is governed by Fed. R. Civ. P. 23. *Wal-*  
21 *Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 343, 131 S. Ct. 2541, 180 L. Ed. 2d 374  
22 (2011); *Rusoff v. Happy Grp., Inc.*, No. 21-CV-08084-AMO, 2024 WL 5339463, at  
23 \*7 (N.D. Cal. Sept. 27, 2024). A class may be maintained where the four prerequisites  
24 of Rule 23(a) have been met—numerosity, commonality, typicality, and adequacy—  
25 and where the action classifies as one of the three types of actions identified in Rule  
26 23(b). *Id.* at 345, 349. Plaintiff carries the burden of establishing that these  
27 requirements have been met by a preponderance of the evidence. *Small v. Allianz Life*  
28 *Ins. Co. of N. Am.*, 122 F.4th 1182, 1198 (9th Cir. 2024), *cert. denied*, 145 S. Ct. 2852

(2025); *In re Bank of Am. California Unemployment Benefits Litig.*, No. 21MD2992-GPC(MSB), 2025 WL 2816808, at \*17 (S.D. Cal. June 24, 2025). While the Court must conduct a “rigorous analysis” to determine whether the requirements have been met, which may require it “consider[] the merits of the underlying claim to the extent that the merits overlap with the Rule 23 requirements,” but the Court should not conduct a “mini-trial” to determine whether Plaintiff could actually prevail.”” the Court need not conduct a “mini-trial” on the merits of the case. *Makaron v. Enagic USA, Inc.*, 324 F.R.D. 228, 231 (C.D. Cal. 2018).

#### IV. ANALYSIS: CLASS CERTIFICATION

Plaintiff has established by a preponderance of the evidence that the requirements of Rule 23(a) and Rule 23(b) have been met in this case. Given the uniformity of Defendant’s actions with respect to the Class Members and the similarity of the harm caused by Defendant’s actions across Class Members, this case is ideally suited to class treatment.

##### A. *Class Definition*

Plaintiff requests certification of the following class:

**All persons who purchased a Metacard through the date of class certification**

Excluded from the Class are Defendant’s officers and directors, and any entity in which Defendant has a controlling interest; and the affiliates, legal representatives, attorneys, successors, heirs, and assigns of Defendant. Excluded also from the Class are Members of the judiciary to whom this case is assigned, their families and Members of their staff. Finally, excluded from the Class are any individuals who signed the “Token Rescission Agreement” with Defendant Metacard LLC.

##### B. *Federal Rule of Civil Procedure 23(a)*

###### 1. Numerosity: Rule 23(a)(1)

Numerosity requires a showing that the class is so numerous that joinder of all members individually would be impracticable. *Makaron*, 324 F.R.D. at 231; *Vizcarra v. Unilever United States, Inc.*, No. 4:20-CV-02777 YGR, 2023 WL 2364736, at \*7

(N.D. Cal. Feb. 24, 2023) (citing Fed. R. Civ. P. 23(a)(1)). Numerosity may be inferred by the Court “based on the facts of each particular case to determine if numerosity is satisfied.” *In re Bank of Am. California Unemployment Benefits Litig.*, 2025 WL 2816808, at \*18. “As a general rule, classes of 20 are too small, classes of 20–40 may or may not be big enough depending on the circumstances of each case, and classes of 40 or more are numerous enough.” *Id.*

Numerosity is easily met in this case. All 10,000 Metacards that were initially minted were purchased. Ex. 2, Decl. Clark, Figure 3, p. 13. Although it is not possible to determine exactly how many unique purchasers there are, some assumptions can be made that suggest that the number of purchasers is in the thousands. In the initial mint, the 10,000 Metacards were purchased by 5,226 unique addresses. Ex. 2, Decl. Clark § 3.1. each unique address could purchase a maximum of ten Metacards, but most addresses (3,404) purchased only one. *Id.* This supports the conclusion that there are 3,404 class members *at a minimum*. Secondary market transfers brought the total of unique addresses that held a Metacard at some point to 16,744. *Id.* § 4.1. Numerosity is clearly met in this case.

In assessing numerosity, courts also consider the ascertainability of the class members. “To be ascertainable, the definition of the class must be definite enough so that it is administratively feasible for the court to ascertain whether an individual is a member before trial, and by reference to objective criteria.” *James v. Uber Techs. Inc.*, 338 F.R.D. 123, 130 (N.D. Cal. 2021) (internal quotation marks omitted). “The Court must identify the persons (1) entitled to relief, (2) bound by a final judgment, and (3) entitled under Rule 23(c)(2) to the best notice practicable in a Rule 23(b)(3) action.” *Id.* (internal quotation marks omitted).

The Class Members are ascertainable. Although the names of individuals who purchased the Metacards are not identified, there are unique digital addresses that were used to purchase the Metacards. Ex. 2, Decl. Clark § 3.1, 4.1. Therefore, it is possible to use these unique addresses to ascertain the members of the Class. Plaintiff already



1 has a proposed system for sending notice to class members should this class be  
2 certified. *See Id.*

3                   2. Commonality: Rule 23(a)(2)

4           Rule 23(a)(2) requires that there be “questions of law or fact common to the  
5 class.” *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1172 (9th Cir. 2010)  
6 (quoting Fed. R. Civ. P. 23(a)(2)). The issues of commonality under Rule 23(a)(2) and  
7 predominance under Rule 23(b)(3) are related in that predominance asks whether “the  
8 questions of law or fact common to class members predominate over any questions  
9 affecting only individual members.” *In re Bank of Am. California Unemployment*  
10 *Benefits Litig.*, 2025 WL 2816808, at \*21. Accordingly, Plaintiff will discuss  
11 commonality in conjunction with predominance in Section V.C.1, *infra*.

12                   3. Typicality: Rule 23(a)(3)

13           Under Rule 23(a)(3) “the claims or defenses of the representative parties [must  
14 be] typical of the claims or defenses of the class.” Fed. R. Civ. Proc. 23(a)(3).  
15 Typicality tests “whether other members have the same or similar injury, whether the  
16 action is based on conduct, which is not unique to the named plaintiffs, and whether  
17 other class members have been injured by the same course of conduct.” *Jaguar Land*  
18 *Rover N. Am., LLC*, 617 F.3d at 1175. The typicality standard is “permissive,”  
19 requiring “only that the representatives’ claims are ‘reasonably co-extensive with  
20 those of absent class members; they need not be substantially identical.” *Meyer v.*  
21 *Portfolio Recovery Assocs., LLC*, 707 F.3d 1036, 1042 (9th Cir. 2012). Because  
22 typicality concerns the nature of the claims or defenses, not the particular underlying  
23 facts or relief sought, typicality demands only that “each class member's claim arises  
24 from the same course of events, and each class member makes similar legal arguments  
25 to prove the defendant's liability.” *Id.*

26           “Measures of typicality include whether other members have the same or similar  
27 injury, whether the action is based on conduct, which is not unique to the named  
28 plaintiffs, and whether other class members have been injured by the same course of

1 conduct.” *Ruiz Torres v. Mercer Canyons Inc.*, 835 F.3d 1125, 1141 (9th Cir. 2016)  
2 (internal quotation marks omitted). However, the focus is on the class representatives,  
3 not whether there are some unique defenses applicable to individual class members.  
4 *In re Bank of Am. California Unemployment Benefits Litig.*, 2025 WL 2816808, at  
5 \*19.

6 In the current case, Plaintiff’s claims are typical of the Class. The pre-sale  
7 messages that Defendants broadcast in the Instagram post, the podcast episode and the  
8 livestream were uniform across the platforms and were the primary sources of  
9 information regarding the Metacard sale. *See* Ex. 3, Decl. Kherkher, Ex. A, Podcast  
10 Transcript; Ex. 3, Decl. Kherkher, Ex. B, Livestream Transcript; SAC ¶¶ 110–12. In  
11 fact, Defendants represented in the livestream that 242,000 individuals had tuned in.  
12 Ex. 3, Decl. Kherkher, Ex. B, Livestream Transcript. Accordingly, Metacard  
13 purchasers received a uniform set of messages regarding the Metacard the day prior to  
14 the initial mint. Plaintiff would not have received these messages an in any way  
15 different from the rest of the Class Members.

16 Metacard purchases were made in a uniform fashion, with thousands purchasing  
17 during the initial mint on January 19, 2022, and secondary market purchases taking  
18 place following the initial mint, all through the cryptocurrency platform that required  
19 the creation of an address associated with a digital wallet. Ex. 2, Decl. Clark §§ 2.1,  
20 3.1, 3.4. Plaintiff necessarily went through this process to purchase his Metacard  
21 during the initial Mint.

22 When the time came for Defendants to pull the plug on the Metacard Program,  
23 Defendants gave all Metacard purchasers the same options—a 30-day window in  
24 which to participate the Bored Jerky Program or the Token Rescission Agreement, or  
25 else lose the opportunity entirely. SAC ¶ 112. Plaintiff’s situation was no different.

26 Typicality is met in this case. Plaintiff was exposed to the same messaging from  
27 Defendants and participated in the Metacard Program in the same manner as the Class  
28 Members. Plaintiff is subject to no unique defenses. Therefore, this factor weighs in



1 favor of certification.

2 4. Adequacy: Rule 23(a)(4)

3 Rule 23(a)(4) provides that class representatives must “fairly and adequately  
4 protect the interests of the class.” *Jaguar Land Rover N. Am., LLC*, 617 F.3d at 1172.  
5 Adequacy demands that class representatives and their counsel vigorously prosecute  
6 the action and hold no conflict of interest with the class members. *Id.*

7 Plaintiff has and will continue to adequately represent the Class. Ex. 4,  
8 Declaration of Jarrett L. Ellzey (“Decl. Ellzey”) ¶ 10; Ex. 5, Declaration of Plaintiff  
9 Trenton Smith (“Decl. Plaintiff”) ¶¶ 7–9, 16. Plaintiff has been actively engaged in  
10 this case. Ex. 4, Decl. Ellzey at ¶ 11; Ex. 5, Decl. Plaintiff ¶¶ 7, 8. He has and will  
11 continue to vigorously prosecute this action. Ex. 4, Decl. Ellzey at ¶ 11; Ex. 5, Decl.  
12 Plaintiff ¶¶ 7, 8, 16. Further, Plaintiff has no conflict of interest with other Class  
13 Members and is subject to no unique defenses. Ex. 5, Decl. Plaintiff ¶ 10. As noted  
14 above, Plaintiff’s experiences with the Metacard Program are fundamentally the same  
15 as the Class Members’ experiences.

16 Plaintiff’s counsel are likewise adequate, holding no conflict of interest with the  
17 Class Members. Ex. 4, Decl. Ellzey ¶ 12. Plaintiff’s counsel have vigorously  
18 prosecuted this case, as evidenced by the filings in this case thus far. Further, Plaintiff’s  
19 counsel are highly qualified, with significant experience in class actions. *Id.* ¶¶ 14–22.

20 The adequacy requirement is clearly met in this case.

21 **C. *Federal Rule of Civil Procedure 23(b)(3)***

22 Under Rule 23(b)(3), a plaintiff must show that “the questions of law or fact  
23 common to class members predominate over any questions affecting only individual  
24 members, and that a class action is superior to other available methods for fairly and  
25 efficiently adjudicating the controversy.” *Jaguar Land Rover N. Am., LLC*, 617 F.3d  
26 at 1172 (quoting Fed. R. Civ. P. 23(b)(3)); *Vizcarra*, 2023 WL 2364736, at \*15.

27 1. Predominance and Commonality

28 The commonality requirement of Rule 23(a)(2) has “been construed

1 permissively, and all questions of fact and law need not be common to satisfy the rule.”  
2 *Rusoff*, 2024 WL 5339463, at \*10 (quoting Fed. R. Civ. P. 23(a)(2)). (internal  
3 quotation and editing marks omitted). Even a single common question will suffice to  
4 fulfill this requirement, but that question needs to “generate common *answers* apt to  
5 drive the resolution of the litigation.” *Torres*, 835 F.3d at 1133 (emphasis in original).  
6 “In determining whether the common question prerequisite is met, a district court is  
7 limited to resolving whether the evidence establishes that a common question is  
8 *capable* of class-wide resolution, not whether the evidence in fact establishes that  
9 plaintiffs would win at trial.” *Falcone v. Nestle USA, Inc.*, No. 3:19-CV-723-L-DEB,  
10 2024 WL 4868298, at \*5 (S.D. Cal. Sept. 26, 2024). Commonality exists “[w]here the  
11 circumstances of each particular class member vary but retain a common core of  
12 factual or legal issues with the rest of the class.” *Parra v. Bashas’, Inc.*, 536 F.3d 975,  
13 978–79 (9th Cir. 2008).

14 Predominance is related to commonality in that it “asks whether the common,  
15 aggregation-enabling, issues in the case are more prevalent or important than the non-  
16 common, aggregation-defeating, individual issues.” *Vizcarra*, 2023 WL 2364736, at  
17 \*15 (internal quotation marks omitted). “An individual question is one where members  
18 of a proposed class will need to present evidence that varies from member to member,  
19 while a common question is one where ‘the same evidence will suffice for each  
20 member to make a prima facie showing or the issue is susceptible to generalized, class-  
21 wide proof.” *Id.* (internal quotation and editing marks omitted) (citing *Tyson Foods,*  
22 *Inc. v. Bouaphakeo*, 577 U.S. 442, 453 (2016)).

23 However, as long as at least one of the case’s central issues predominates and  
24 is common to the class, “the action may be considered proper under Rule 23(b)(3)  
25 even though other important matters will have to be tried separately, such as damages  
26 or some affirmative defenses peculiar to some individual class members.” *Id.* Judicial  
27 economy is a key concern of the predominance inquiry. *In re Bank of Am. California*  
28 *Unemployment Benefits Litig.*, 2025 WL 2816808, at \*21. Determining whether

1 common issues predominate requires some examination of the elements of the  
2 plaintiff's claims. *Id.*

### 3 CLRA

4 Plaintiff's CLRA claim asks whether members of the public are likely to be  
5 deceived by a representation, and the test is an objective one—the "reasonable  
6 consumer" test. *Rusoff*, 2024 WL 5339463, at \*11. Accordingly, the finder of fact need  
7 not examine Class Members' individual interactions with Metacard. *See Id.* at \*13.

### 8 Fraud

9 Plaintiff's fraud claim requires proof of the following elements: (1)  
10 misrepresentation, (2) knowledge of falsity, (3) intent to induce reliance on the  
11 misrepresentation, (4) justifiable reliance on the misrepresentation, and (5) resulting  
12 damages. *Cansino v. Bank of America*, 224 Cal. App. 4th 1462, 1469, 169 Cal. Rptr.  
13 3d 619, 625 (2014). "[R]eliance may be presumed if the defendant's  
14 misrepresentations or omissions were material." *Id.* "A misrepresentation is judged to  
15 be material if a reasonable person would attach importance to its existence or  
16 nonexistence in determining his choice of action in the transaction in question." *Id.*  
17 (internal quotation and editing marks omitted). Therefore, like the CLRA claim, the  
18 finder of fact need not examine Class Members' individual reliance on Defendants'  
19 statements.

20 Thus, the common questions at issue in Plaintiff's common law fraud claims  
21 will be similar to those at issue in Plaintiff's CLRA claim. One of those common  
22 questions will be whether Defendants' representations made in the podcast episode  
23 and livestream were false or misleading. This is a common question—the answer will  
24 be the same for every Class Member because it examines the statements made and  
25 Defendants' universal intent. For example, this case will ask whether Defendants'  
26 statement that they have a "team" and a "budget" was false or misleading, and the  
27 answer to that question will depend on Defendants' words and actions and will be the  
28 same for every Class Member. This is true for every statement made by Defendants in

1 their livestream and podcast episode. *See Yokoyama v. Midland Nat. Life Ins. Co.*, 594  
2 F.3d 1087, 1093 (9th Cir. 2010) (“Plaintiffs’ case will not require the fact-finder to  
3 parse what oral representations each broker made to each plaintiff. Instead, the  
4 factfinder will focus on the standardized written materials given to all plaintiffs and  
5 determine whether those materials are likely to mislead consumers acting reasonably  
6 under the circumstances.”).

7 Similarly, for both Plaintiff’s common law fraud claim and CLRA claim, the  
8 finder of fact will have to determine whether each of Defendants’ statements in the  
9 podcast episode and livestream was “material.” This analysis is judged on an objective  
10 standard and therefore will not vary from Class Member to Class Member. The finder  
11 of fact will also examine what, if any, benefits of the Metacard were provided. There  
12 are no individualized questions with respect to this issue as well because Defendants  
13 intended that any benefits of the Metacard would be available to all Metacard holders.  
14 Ex. 1, Depo. Hill 187:22–188:21.

15 The falsity and materiality of Defendants’ statements are key elements of  
16 Plaintiff’s fraud and CLRA claims. Going through each statement, Defendants’ efforts  
17 (or lack thereof) to deliver on those standards, and Defendants’ knowledge of the  
18 falsity of its statements are all substantial factors geared assessing the ultimate issues  
19 in this case. The same is true for the question of whether those statements were  
20 material. These are questions that either depend on Defendants’ own statement of  
21 mind and actions or are judged on an objective standard, meaning the answers will not  
22 vary from Class Member to Class Member. Therefore, these are “common,  
23 aggregation-enabling, issues” that will be far more prevalent and important than any  
24 “non-common, aggregation-defeating, individual issues” that Defendants might  
25 identify. As such, common questions predominate in this case with respect to  
26 Plaintiff’s fraud and CLRA claims. *See In re Bank of Am. California Unemployment*  
27 *Benefits Litig.*, 2025 WL 2816808, at \*39 (citing *Vaccarino v. Midland Nat. Life Ins.*  
28 *Co.*, No. CV 11-5858 CAS MANX, 2013 WL 3200500, at \*15-16 (C.D. Cal. June 17,

2013) (finding common issues predominate for common law fraud and the fraud prong of the UCL where “all class members here received uniform representations, and [Defendant] treated the proposed class the same”).

### Civil Conspiracy

Plaintiff’s civil conspiracy claim requires proof of three elements: “(1) the formation and operation of the conspiracy, (2) wrongful conduct in furtherance of the conspiracy, and (3) damages arising from the wrongful conduct.” *Kidron v. Movie Acquisition Corp.*, 40 Cal. App. 4th 1571, 1581, 47 Cal. Rptr. 2d 752, 757 (1995). Once again, the answers to these questions are primarily aimed at *Defendants’* actions, meaning the answers will not vary from Class Member to Class Member. Accordingly, questions surrounding Plaintiff’s civil conspiracy claim are common to the Class Members and predominate over individual questions.

Because common issues predominate over individual questions, the commonality and predominance requirements weigh in favor of certification.

### 2. Superiority

“Superiority requires a consideration of (A) the class members’ interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation in the particular forum; and (D) the likely difficulties in managing a class action.” *In re Bank of Am. California Unemployment Benefits Litig.*, 2025 WL 2816808, at \*46 (internal quotation marks omitted) (citing Fed. R. Civ. P. 23(b)(3)(a)-(d) and *Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180 (9th Cir. 2001)).

Each of these factors weighs in favor of class certification. First, Plaintiff is aware of no other Class Member who is interested in individually controlling the prosecution or defense of an action separate from this case. Ex. 5, Decl. Plaintiff ¶ 12.

With respect to the desirability of concentrating the litigation in this forum, Plaintiff submits that this factor weighs in favor of superiority. Almost all the relevant

1 facts involve virtual or digital platforms, including Instagram, podcasts, livestreams,  
2 discord channels, cryptocurrency, digital transfers and digital wallets. Therefore, the  
3 location is less important with respect to these facts. However, California is the home  
4 state of Plaintiff and was the home state or principal place of business of Defendants  
5 Shahidi, Forgeard, Nelk USA, Inc., and Metacard, LLC. at the time of the events at  
6 issue, making this forum preferable to all others.

7 Finally, there are no apparent difficulties in managing a class action that would  
8 be unusual or particular to this case. Accordingly, each factor is either neutral or  
9 weighs in favor of superiority and thus class certification.

10 **V. ALTERNATIVE REQUEST FOR ADEQUATE TIME TO CONDUCT**  
11 **DISCOVERY**

12 Although Plaintiff believes has demonstrated above that class certification is  
13 appropriate, if this Court should disagree then Plaintiff requests that, rather than deny  
14 Plaintiff's class certification request, the Court grant Plaintiff additional time to  
15 conduct relevant discovery and re-submit his request for class certification.

16 **A. *Procedural Background***

17 In order to prepare for the current motion requesting class certification, Plaintiff  
18 served Interrogatories and Requests for Production ("RFPs") upon Defendants as soon  
19 as discovery opened. Defendants served responses on or about August 6, 2025,  
20 containing excessive and unwarranted objections, giving rise to a discovery dispute  
21 between the parties. The dispute was detailed in the Joint Stipulation re: Plaintiff's  
22 Motion to Overrule General and Boilerplate Objections, Compel Further Responses to  
23 Discovery and Enter Protective Order ("Motion to Compel") (ECF No. 77, 77-1).

24 Following a hearing on October 14, 2025, the Court ordered Defendant to  
25 produce certain discovery responses within thirty days or ninety days and to meet and  
26 confer on others. Ex. 6, Transcript of October 14, 2025, Proceedings Before U.S.  
27 Magistrate Judge Douglas F. McCormick ("Hearing Transcript"). Notably, Counsel  
28 for Plaintiff specifically objected to these deadlines as being beyond the November



1 13, 2025, deadline for filing the current Motion, but to no avail. Hearing Transcript,  
2 pp. 7, 14–15. As further related below, the discovery disputes and timeline for  
3 Defendants’ responses have impaired Plaintiff’s ability to provide additional evidence  
4 in support the current Motion.

5 ***B. Legal Standards***

6 To undertake the rigorous analysis of the prerequisites for class certification, as  
7 a district court must, may require discovery. *ABS Entm’t, Inc. v. CBS Corp.*, 908 F.3d  
8 405, 427 (9th Cir. 2018) (citing *Kamm v. Cal. City Dev. Co.*, 509 F.2d 205, 210 (9th  
9 Cir.1975) (“The propriety of a class action cannot be determined in some cases without  
10 discovery;” “To deny discovery in [such cases] would be an abuse of discretion.”).  
11 The Ninth Circuit has recognized that “the propriety of a class action “cannot be  
12 determined in some cases without discovery, as for example, where discovery is  
13 necessary to determine the existence of a class or set of subclasses” and it would be an  
14 abuse of discretion deny discovery in such case. *Kamm*, 509 F.2d at 210. In this vein,  
15 the Ninth Circuit has explained that explained that “the better and more advisable  
16 practice” is to permit enough discovery to establish whether a class action is  
17 maintainable, “especially when the information is within the sole possession of the  
18 defendant.” *Doninger v. Pacific Northwest Bell, Inc.*, 564 F.2d 1304, 1313 (9th  
19 Cir.1977); *ABS Entm’t*, 908 F.3d at 427 (internal citations omitted) (remanding action  
20 for “reconsideration of whether pre-certification discovery is warranted”). A district  
21 court should afford the litigants an opportunity to present evidence as to whether a  
22 class action was maintainable,” *Vinole v. Countrywide Home Loans, Inc.*, 571 F.3d  
23 935, 942 (9th Cir. 2009), and the necessary antecedent to the presentation of evidence  
24 is enough discovery to obtain the material, especially when the information is within  
25 the sole possession of the defendant. *Doninger*, 564 F.2d at 1313.

26 In *ABS Entm’t*, the Ninth Circuit reversed the district court's striking of ABS's  
27 certification motion and remanded for consideration of the class action motion on the  
28 merits, including reconsideration of whether pre-certification discovery is warranted.

1 908 F.3d 405 at 427. The Court noted Rule 23(c)(1)(A)’s “emphasis on the parties’  
2 obligation to present the court with sufficient information to support an informed  
3 decision on certification” and referenced the parties’ need for sufficient time to  
4 develop an adequate record. *Id.*

5 The Ninth Circuit precedent supports the right of class counsel here to conduct  
6 precertification discovery once a prima facie case has been pled and has survived a  
7 motion to dismiss. *See, e.g., Kaminske v. JP Morgan Chase Bank N.A.*, No. SACV 09-  
8 00918 JVS (RNBx), 2010 WL 5782995 at \*2, 2010 U.S. Dist. LEXIS 141514 (C.D.  
9 Cal. May 21, 2010). Moreover, even the absence of a such a prima facie showing  
10 would not end the inquiry. Pre-certification discovery may be permitted where the  
11 plaintiff, alternatively, demonstrates “that discovery measures are likely to produce  
12 persuasive information substantiating the class action allegations.” *Doninger*, 564  
13 F.2d at 1313. Nevertheless, where the plaintiff makes a prima facie showing of Rule  
14 23's prerequisites, there is no burden on the plaintiff to demonstrate that discovery  
15 measures are likely to produce persuasive information substantiating the class action  
16 allegations. *Id.*

17 As detailed above, Plaintiff can satisfy his burden to make a prima facie showing  
18 of the Rule 23 requirements. As detailed below, Plaintiff can also demonstrate that  
19 discovery measures are likely to produce persuasive information substantiating his  
20 class allegations.

### 21 **C. Argument**

22 Much of the information requested in the Interrogatories and RFPs was relevant  
23 to the current motion. For example, in Interrogatory No. 3, Plaintiff requested the  
24 identity of “each purchaser of a Metacard, NFT and, if known, their address, the email  
25 address and telephone number.” Motion to Compel, p. 29. This information would  
26 have provided Plaintiff with information regarding the identities of some of the Class  
27 Members and the opportunity to interview one or more of those individuals for  
28 purposes of providing support to the current Motion. Moreover, this information might



1 have provided useful evidence related to the numerosity and ascertainability  
2 requirement.

3 In Interrogatory No. 7, Plaintiff requested a “detailed breakdown” of the total  
4 amount of money or cryptocurrency raised from the sale of Metacard NFTs and how  
5 those funds were used or distributed. Motion to Compel, p. 32. This information would  
6 have been relevant to the typicality, commonality and predominance inquiries because  
7 it would show a uniform treatment of funds relevant to issues raised by Plaintiff’s  
8 fraud and CLRA claims without regard to individualized questions among Class  
9 Members. The same is true for Interrogatory No. 8. Motion to Compel, p. 36.

10 In RFP No. 2, Plaintiff requested documentation “regarding the  
11 ownership/structure of Nelk, Nelk USA and Metacard LLC, including in by-laws,  
12 corporate minutes, shareholder percentages and filings with the California Secretary  
13 of State or any federal (Canada too), provincial, state or local entity.” This information  
14 is potentially relevant to show that Plaintiff’s civil conspiracy claim rests on uniform  
15 evidence, thus supporting commonality and typicality.

16 Although Plaintiff’s counsel took the deposition of Drew Hill, the Director of  
17 Operations for Nelk USA who also performed work for Metacard, LLC, Plaintiffs  
18 were unable to discover details regarding the transfers from the Metacard treasure  
19 wallet, which likely would be relevant to the current Motion as well. *See* Ex. 1, Depo.  
20 Hill 28:13–15, 116:2–25 (stating that although he was in control of five digital wallets,  
21 he would have to get their blockchain addresses off his computer to verify transfer  
22 information).

23 In addition, the key decision makers on the Metacard project are Founder  
24 Defendants and Sam Shahidi. Ex. 1, Depo. Hill 135:13–15. Plaintiff requests an  
25 opportunity to depose these individuals to further establish the propriety of class  
26 certification.

27 These are just some examples of the types of information that has been  
28 requested and additional discovery that would be helpful in pursuing the current

1 Motion. Plaintiff has been diligent in pursuing discovery—Plaintiff served written  
2 discovery requests in a timely manner and Plaintiff’s counsel has taken the deposition  
3 of Drew Hill on November 7, 2025. Importantly, Plaintiff’s counsel did not receive  
4 the transcript of this deposition until November 11, 2025, creating a time crunch in  
5 preparing the current Motion.

6 ***D. Conclusion***

7 Plaintiff has made his prima facie showing of the Rule 23 requirements and also  
8 demonstrated that discovery measures are likely to produce persuasive information  
9 substantiating his class allegations. Pre-certification class discovery is warranted, and  
10 thus, any determination of the class certification issue at this juncture is premature and  
11 improper according to Ninth Circuit precedent. Accordingly, Plaintiff requests that if  
12 this Court is inclined to deny Plaintiff’s request for class certification, then the Court  
13 instead extend the deadline for filing the request for class certification until March 1,  
14 2026, at the earliest, which will provide Plaintiff time to receive and analyze  
15 Defendants’ discovery responses and prepare an amended motion for class  
16 certification.

17 **VI. CONCLUSION**

18 For the reasons stated above, this Court should grant Plaintiff’s request for class  
19 certification or alternatively grant Plaintiff adequate time to complete discovery  
20 related to class certification issues and set a deadline for Plaintiff to file an amended  
21 motion for class certification on March 1, 2026, at the earliest. In addition, Plaintiff  
22 requests that Plaintiff’s Counsel be appointed Class Counsel in this case.

1 Dated: November 13, 2025

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